

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

November 19,2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: May 13, 2008

Case Number: TSO-0631

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxxxxx (hereinafter referred to as "the individual") to hold an access authorization 1/ under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be granted.

I. Background

In 1999, the DOE granted the individual a "Q" clearance. At some point thereafter, the individual revealed to the Local Security Office (LSO) that he had used marijuana in 1979. The issue was resolved and the individual signed a drug certification in 2001. In February 2005, the individual was charged with Domestic Battery. This incident prompted the DOE to issue a Letter of Interrogatory (LOI) to the individual and then to request an OPM investigation. Information revealed during the OPM investigation prompted the LSO to conduct a Personnel Security Interview (PSI) of the individual to address the issues of finances, gambling and the Domestic Battery arrest. After evaluating information provided in the PSI, the LSO referred the individual to a DOE psychologist for a forensic psychological evaluation in March 2006. The individual was diagnosed with Impulse Control Disorder, Not Otherwise Specified (gambling), which the psychiatrist stated causes or may cause a significant defect in judgment or reliability. The individual's security clearance was suspended and his case was submitted for administrative review. However, in June 2006, his clearance was later terminated during the administrative process.

In August 2007, the individual's employer submitted a request for reinstatement of the individual's Q clearance. For purposes of this proceeding, the individual is treated as an applicant for access authorization. Information revealed during a background investigation prompted the LSO to conduct another PSI in September 2007. As a result of the PSI and ongoing financial and gambling issues,

1/ Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a).

the LSO referred the individual to a second DOE psychologist to conduct a forensic psychological examination. The DOE psychologist examined the individual in October 2007, and memorialized his findings in a report (Psychological Report or Exhibit (Ex.) 11). In the Psychological Report, the DOE psychologist opined that the individual met the criteria for Impulse Control Disorder, Not Otherwise Specified (NOS) due to his gambling, which causes problems with the individual's reliability and judgment.

In February 2008, the LSO sent a letter (Notification Letter) advising the individual that it possesses reliable information that created a substantial doubt regarding his eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (l) (hereinafter referred to as Criteria H and L, respectively). 2/

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing that I convened, the DOE Counsel called one witness, the DOE psychologist. The individual called two witnesses, his supervisor and his wife. He also testified on his own behalf. The DOE and the individual submitted a number of written exhibits prior to and during the hearing.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, they must, on the side of denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting his access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full

2/ Criterion H relates to information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Criterion L relates in relevant part to information that a person has "[e]ngaged in unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; . . ." 10 C.F.R. § 710.8(l).

opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As stated above, the LSO cites two criteria as bases for denying the individual's security clearance, Criteria H and L. To support Criterion H, the LSO relies on the DOE psychologist's opinion that the individual meets the diagnostic criteria for Impulse Control Disorder, Not Otherwise Specified (NOS) due to gambling, a mental condition which causes, or may cause, a defect in the individual's judgment or reliability. To support Criterion L, the LSO relies on the following information in its possession regarding the individual's gambling habit: (1) the individual admitted that he has gambled more than intended on several occasions, and has gambled until his last dollar was gone on two occasions in the past; (2) the individual stated that he realized that he had a gambling problem after his arrest for Domestic Violence in 2005, gave his intent to refrain from gambling in the future, but has continued to gamble to the present; (3) in October 2005, the individual filed for Chapter 13 bankruptcy a second time with debts totaling \$40,094.00 (he initially filed for Chapter 13 in June 2005, but had to refile in October because he was late in paying the trustee due to gambling) and admitted that his decision to file bankruptcy was due in mainly to his gambling; (4) during a PSI conducted in February 2006, the individual admitted that he lost about \$5,000 due to gambling, using money that was allocated for bills and rent (he also admitted that the most money he lost at one time was \$1,000 in January 2005); (5) on January 31, 2005, the individual was arrested and charged with Domestic Battery due to an argument over losing about \$400 gambling; (6) the individual admitted that gambling has caused tension and problems in his home and marriage; (7) in January 1997, the individual filed for Chapter 13 bankruptcy, admitted that gambling played a part in his decision to file and admitted that his gambling increased in 1997, making him unable to pay his bills; (8) the individual admitted that he borrowed money from pawn shops and check cashing establishments on three occasions as a result of his gambling; (9) the individual admitted that he withdrew money using a credit card at an automatic teller machine on three occasions when he ran out of money to gamble, and (10) the individual admitted that he gambled for a longer period of time than he planned on two occasions. *See* Statement of Charges at 1 and 2.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's mental health under Criterion H and his judgment and reliability under Criterion L. The security concerns associated with Criteria H and L are as follows. First, a mental condition such as an Impulse Control Disorder can impair a person's judgment, reliability and trustworthiness. *See* Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House. Second, gambling itself is a security concern because that behavior can similarly lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See id.* at Guideline G.

IV. Findings of Fact

The relevant facts in this case are uncontested. The individual began gambling in 1994. He filed for bankruptcy for the first time in 1997 and, at that time, was gambling on a monthly basis. In 2000, the individual gambled more frequently, spending about \$1,000 a month. In January 2005, the individual was arrested and charged with Domestic Battery due to an argument with his wife over gambling. The incident occurred after both the individual and his wife lost about \$400 while gambling at a casino and after they agreed not to gamble anymore because they were purchasing a new condominium. According to the individual, the argument was caused by stress in his life because his mother had recently died. The individual stated that he realized he had a problem with gambling after his arrest for Domestic Battery; however he continued to gamble and, in October 2005, the individual filed for bankruptcy a second time with debts totaling \$40,094.00.

During PSIs conducted in February 2006 and September 2007, the individual admitted that he has gambled more than he intended to on several occasions and that he lost about \$5,000 in 2004 due to gambling, using money that was allocated for bills and rent. He also admitted that gambling has caused him both financial and marital stress. The individual further admitted to borrowing money from pawn shops and check cashing establishments on three occasions as a result of his gambling, and withdrawing money on credit from an automatic teller machine when he ran out of money to gamble. On October 19, 2007, the individual was referred for a forensic psychological evaluation. During the course of the evaluation, the individual stated that he gambled between \$200 to \$300 twice a month, which the psychologist opined likely reflects an addiction to gambling. Although the individual admitted that his gambling has been out of control in the past, he denied that gambling has caused any problems in his life at the present time. Based on his evaluation of the individual, the DOE psychologist concluded that while the individual does not meet the full criteria for Pathological Gambling, Impulse Control Disorder NOS is a diagnosis that reflects the individual's inability to control his gambling habit, which at times causes significant impairments in his life. *See* Ex. 11 at 10.

V. Analysis

I have thoroughly considered the record in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of

the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c). ^{3/} After due deliberation, I have determined that the individual's access authorization should not be granted. I cannot find that granting the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

1. The Individual's Testimony

At the hearing, the individual testified that he started gambling in 1994 because he had extra money and "didn't have anything else to do." Transcript of Hearing (Tr.) at 22. He further testified that he did not believe he had a problem with gambling until he read the DOE psychologist's report. *Id.* at 22-24. The individual stated that both he and his wife realized that they had to adjust their lifestyles and reduce the amount that they gambled. According to the individual, he began to make lifestyle changes about one year ago. *Id.* at 24. He stated that at the time he was evaluated by the DOE psychologist, he was gambling about \$250 per month. *Id.* at 26. However, since the evaluation, the individual stated that he has "almost stopped" gambling, indicating that he last gambled about two or three weeks prior to the hearing and gambled between \$60 and \$80 on that occasion. *Id.* at 27. The individual further testified that he has never seriously attempted to stop gambling, and admitted that he was caught up in the "glitz and glamour" of gambling. *Id.* When questioned about how long he has gone without gambling, the individual testified that he has gone about a month without gambling. *Id.* He stated that his wife has stopped gambling, adding that life is better for them since they now have more money for their actual needs. *Id.* at 28.

During the course of the hearing, the individual admitted to the various concerns cited in the Notification Letter, specifically that he has gambled until his last dollar on a couple of occasions, that his bankruptcy was due to gambling, that his domestic violence issue was related to his gambling, that his gambling has caused both financial and marital stress and that he has withdrawn money from his credit card automatic teller machines when he ran out of money to gamble. *Id.* at 29-32, 38. The individual testified that in 2005, he attempted to decrease his gambling from about \$1500 a month to about \$700 a month. *Id.* at 36. He further testified that about ten months ago, he decreased his gambling to \$300 a month. The individual stated, however, that he currently has not gambled in the past three weeks. *Id.* at 37. Finally, the individual testified about his future intentions related to his gambling habit. He stated that he has never considered entering a treatment program for his gambling habit and does not believe he is in need of treatment because he does not have the "urge" to gamble. *Id.* at 40. He admitted that he did not believe he had a problem with gambling in the past, but realizes now the role that gambling has played in his life. The individual further testified that he wants more out of life now, and that he would be open to a treatment program. *Id.*

^{3/} Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

2. The Wife's Testimony

The individual's wife testified that both she and her husband have eliminated gambling from their lives. *Id.* at 46. She stated that they made significant changes in their gambling habits after their bankruptcy and have not gambled in a long time, but could not recall exactly how long it has been since they last gambled. *Id.* The individual's wife admitted that gambling has caused arguments in their marriage, and stated that neither one of them wants gambling in their lives. She further testified that she does not believe the individual has a gambling problem and described their gambling as something that both of them "got caught up in." *Id.* at 49. The individual's wife stated that since she and her husband have stopped gambling, they are getting along better with no arguments. *Id.* She testified that it has not been difficult for both her and the individual to stop gambling because they did not like the negative consequences of gambling in their lives. *Id.* at 51. The individual's wife finally testified that she does not believe the individual is in need of treatment, and believes the individual's future intentions are to not gamble at all. *Id.*

3. Supervisor's Testimony

The individual's supervisor testified that the individual is an exceptional worker, is well respected and is a team player. He further testified that he was unaware of any personal issues the individual may have, and that he has only socialized with the individual at work. *Id.* at 11.

4. The DOE Psychologist's Testimony and Report

The DOE psychologist stated in his October 2007 Psychological Report that the individual has an impulse control disorder, due to his gambling, that causes problems with his reliability or judgment. Ex. 11 at 10. He further stated that while the individual does not meet the full criteria for Pathological Gambling, Impulse Control Disorder NOS is a diagnosis that reflects the individual's inability to control his gambling habit, which at times has caused significant impairments in his life. *Id.* The DOE psychologist also stated that at the time of the individual's interview, the individual minimized his gambling problem. He noted that despite the individual's gambling problems, *i.e.*, two bankruptcies, domestic disputes, borrowing money to pay for gambling-related debts, the individual continued to gamble. He opined that the individual's current gambling habit "is not prudent based on [the individual's] likely gambling addiction, and anything other than no gambling at all would be a sign of a problem." *Id.*

After listening to the testimony of the individual and his witnesses during the hearing, the DOE psychologist testified that the most noticeable difference in the individual is that he is now more willing to admit that he has a problem with gambling. Tr. at 74. He noted that during his evaluation of the individual, the individual appeared to be defensive and minimized his gambling problems, recalling that the individual gave discrepant information regarding the amount of money he gambled at a time. *Id.* at 76. However, the DOE psychologist noted that the individual was more open during the hearing. *Id.*

With respect to rehabilitation and reformation, the DOE psychologist testified that the individual has established that he has had a hard time controlling his gambling habit and is still gambling as of just a few weeks ago. *Id.* at 82. He cited the individual's current gambling status as evidence that he is not rehabilitated or reformed from his gambling problems. The DOE psychologist testified that a gambling addiction is similar to an alcohol addiction, stating further that in order for the individual to completely eliminate gambling-related problems in his life, he has to completely abstain from gambling. He testified that his biggest concern is that the individual has not stopped gambling completely, noting that he should have stopped when problems started to persist in his life. *Id.* The DOE psychologist testified that treatment would be helpful for the individual; however, he did not think the individual believes he is in need of treatment. He added that treatment will only be helpful if the individual really wants it. *Id.* at 83. The DOE psychologist testified that the individual should totally abstain from gambling for one to two years in order to be considered rehabilitated, stating that "one year would be a good effort in showing that [the individual's] making progress; two years would be a much more secure conclusion that [the individual] doesn't have a problem," reducing his risk of relapse. *Id.* at 85. Finally, the DOE psychologist testified that he still maintains that the individual has an impulse control disorder which could affect his judgment and reliability.

5. Hearing Officer's Evaluation

In the administrative process, Hearing Officers accord deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing* (Case No. TSO-0215), <http://oha.doe.gov/cases/security/tso0215.pdf>. *Personnel Security Hearing* (Case No. TSO-0466), <http://oha.doe.gov/cases/security/tso0466.pdf>. In this case, I accorded substantial weight to the opinion of the DOE psychologist who testified at the hearing that the individual had not demonstrated adequate evidence of rehabilitation and reformation as of the date of the hearing. Moreover, from a common-sense perspective, the following factors militate against granting the individual's access authorization. Although the individual now appears to recognize and acknowledge that he has a gambling problem, it is clear that the individual has only recently accepted his problem and that he would benefit from treatment. As stated above, the individual testified that he last gambled only about three weeks prior to the hearing. It was also apparent during the hearing that although the individual stated that he would be open to treatment, he was not convinced that he needed treatment at this time. Finally, I am persuaded by the opinion of the DOE psychologist that the individual should totally abstain from gambling for a period of one to two years in order to achieve adequate evidence of rehabilitation or reformation. The record clearly supports the DOE psychologist's judgment and conclusion. Based on these reasons, I must find that the individual has not yet mitigated the security concerns associated with his gambling.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE to raise serious security concerns under Criteria H and L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner,

including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth convincing evidence to mitigate the security concerns associated with both criteria at issue. I am therefore unable to find that granting the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be granted at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: November 19, 2008